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Docket No. 2629-4005US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Attila T. LORINCZ

Group Art Unit: 1631

Serial No.: 09/210,031

Examiner: John S. BRUSCA

Filed: December 11, 1998

For: UNIVERSAL COLLECTION MEDIUM

Customer ID: 27123

PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Mail Stop PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition for reconsideration of the February 1, 2005 Determination of Patent Term Adjustment under 35 U.S.C. §154(b) indicating a Patent Term Adjustment of 129 days for the above-referenced application.

According to 37 C.F.R. §1.705(b), applicants submit herewith 1) the fee set forth in 37 C.F.R. §1.18(e) and 2) a statement of the facts involved. Also enclosed herewith is a copy of a request for a refund of the Appeal Fee as separately submitted.

STATEMENT OF FACTS

On January 24, 2003 a Continued Prosecution Application (CPA) was filed in the Patent and Trademark Office (PTO), thereby enabling eligibility of the instant application for Patent Term Adjustment under 35 U.S.C. §154.

A Final Rejection was mailed from the PTO on April 28, 2003, which is within the 4 months response period.

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Applicants then filed a Request for Continued Examination on August 27, 2003 with a Petition for a one month Extension of Time.

On October 10, 2003, the PTO mailed a Final Rejection.

Applicants responded by filing a Notice of Appeal on January 9, 2004.

In a telephone conversation with Examiner Bruscha on August 16, 2004, he indicated that the finality would be withdrawn in view of Claim 50, which upon amendment into independent format would be allowable. On September 15, 2004, the PTO mailed a Non-Final Rejection, withdrawing the finality of the previously mailed Final Rejection (see, Exhibit 1; Detailed Action, page 2, par. 1) which specifically states that “[t]he finality of the Office action mailed 10 October 2003 is withdrawn because the status of claim 50 was improperly listed as allowed on the Office action summary.”

Applicants respectfully request reconsideration of the Patent Term Adjustment for failing to take certain actions within a specified time frame according to 37 C.F.R. §1.702(a)(2), which indicates that the patent term would be adjusted if the issuance of the patent was delayed due to the failure of the PTO to response to a reply under 35 U.S.C. §132 or to an appeal taken under 35 U.S.C. §134 not later than four months after the date on which the reply was filed or the appeal was taken. In view of the withdrawal of finality of the Office Action dated October 10, 2003 and under 37 C.F.R. §1.703(a)(2), Applicants believe that the period of adjustment of patent term due to examination delay should be the number of days in the period beginning on the day after the date that is four months after the RCE was filed (*i.e.*, **December 27, 2003**) and ending on the date of mailing the Non-Final Rejection (*i.e.*, **September 15, 2004**). Applicants believe that the number of days extending the patent term should be **263 days**.

The instant application is not currently subject to a terminal disclaimer.

There are no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 C.F.R. §1.704.

In view of the withdrawal of finality of the October 10, 2003 Office Action, Applicants respectfully request a full refund of the Appeal Fee paid in connection with the January 9, 2004 Notice of Appeal as filed in the Refunds Section of the Receipts Division.

CONCLUSION

In considering the evidence as supported by the attached Exhibit demonstrating the withdrawal of finality of the October 10, 2003 Office Action, Applicants respectfully request reconsideration of the Patent Term Adjustment and request that the instant application be accorded a **Patent Term Adjustment of 263 days.**

Applicants further request that the \$165.00 appeal fee paid by Check No. 032722 in connection with the January 9, 2004 Notice of Appeal be refunded by crediting counsel's Deposit Account No. 13-4500, Order No. 2629-4005US1, in view of the above-mentioned circumstances.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 2629-4005US1. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: April 5, 2005

By: 
Evelyn M. Kwon
Registration No. 54,246

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, NY 10281-2101
(212) 415-8700 Telephone
(212) 415-8701 Facsimile

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Applicant(s): Lorincz, A., et al.

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Serial No.: 09/210,031

Examiner: Brusca, John

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EXPRESS MAIL CERTIFICATE

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Date of Deposit: April 5, 2005

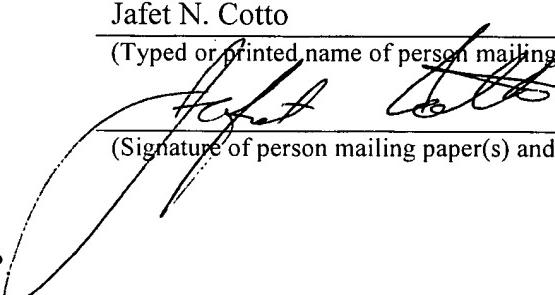
I hereby certify that the following attached paper(s) and/or fee

1. Petition for Reconsideration of Patent Term Adjustment (3 pages) including check in the amount of \$200 to cover petition fee;
2. Copy of Request for Fee Refund (1 page) with Exhibit 1; and
3. Return receipt postcard.

is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to Mail Stop PETITION, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Jafet N. Cotto

(Typed or printed name of person mailing papers(s) and/or fee)


(Signature of person mailing paper(s) and/or fee)

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, NY 10281-2101
(212) 415-8700 Telephone
(212) 415-8701 Facsimile